



STATE OF INDIANA

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January 3, 2013

Mr. Brian Vukadinovich
1129 E. 1300 N.
Wheatfield, Indiana 46392

Re: Informal Inquiry 12-INF-52; Hanover Community School Corporation

Dear Mr. Vukadinovich:

This is in response to your informal inquiry regarding the actions of the Board of the Hanover Community School Corporation ("Board") and its compliance with the Open Door Law ("ODL"). Pursuant to I. C. § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on the applicable provisions of the ODL, I.C. § 5-14-1.5 *et seq.* William S. Kaminski, Attorney, responded on behalf of the Board. His response is enclosed for your reference.

BACKGROUND

In your informal inquiry you provide that the Board published notice of an executive session to be held on Tuesday, December 11, 2012 at 7:00 p.m. On or about Tuesday, December 2, 2012, the notice of the executive session was removed from the School's website. You have been informed by the local news media that it had received notice on December 2, 2012 that the executive session had been cancelled. You inquire whether the Board was in violation of the ODL by not serving notice of the cancellation of the December 11, 2012 executive session on its website where the original notice was published.

You further inquire whether the Board violated the ODL at its December 11, 2012 public meeting by taking action on the issue of placing the current Superintendent, Carol Kaiser, on administrative leave when such action did not appear on the Board's published agenda. You provide that at the December 11, 2012 public meeting, the Board voted to keep Ms. Kaiser on administrative leave until the next Board meeting. The action of the Board was taken under the agenda item titled "Certified Recommendations." However, in the agenda that was provided for the Board, no reference was made to Ms. Kaiser or that the issue was to be discussed.

In response to your informal inquiry, Mr. Kaminski advised that the Board provided proper notice for an executive session that was to occur on Tuesday, December

11, 2012 at 7 p.m. Prior to December 11, 2012, it was determined that an executive session was not necessary. Noting that the ODL does not discuss the cancellation of meetings and giving notice, the Board did provide notice of the cancellation to the media outlet that received the original notice that the executive session was to occur. A copy of the email sent to the media outlet is enclosed for your reference. The ODL does not require that the Board provide cancellation notices on its website, unless it specifically has adopted a policy regarding the same. The Board has not adopted such a policy. Thus, the Board did not violate the ODL when it cancelled the executive session scheduled for December 11, 2012.

As to your inquiries regarding the agenda utilized by the Board for the December 11, 2012 public meeting, the Board has adopted as its parliamentary authority Robert's Rules of Order. *See* Hanover Community School Corporation By-Law 0161. Under the ODL, governing bodies are not required to use an agenda, but if they do, a copy must be posted. The Board does utilize an agenda for its meetings, which are properly posted. The ODL does not prohibit a governing body from amending its agenda. The agenda that was utilized by the Board at the December 11, 2012 meeting was properly amended by the Board at the time of the meeting. No member of the Board objected to the amendment. Robert's Rules of Order provides that, "it is in order for any member to move to amend the proposed agenda by adding any item which the Member desires to add, or by proposing any other change." Accordingly, the Board did not improperly amend its agenda.

ANALYSIS

It is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* I.C. § 5-14-1.5-3(a).

A meeting is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. *See* I.C. § 5-14-1.5-2(c). "Official action" means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). "Public business" means any function upon which the public agency is empowered or authorized to take official action. *See* I.C. § 5-14-1.5-2(e). "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order. *See* I.C. § 5-14-1.5-2(g). Final action must be taken at a meeting open to the public. *See* I.C. § 5-14-1.5-6.1(c).

The ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *See* I.C. § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency,

or if not such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing, requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2). While the ODL provides that notice must be provided for all meetings of a governing body, including executive sessions, the law is silent as to any requirement that a governing body must follow in cancelling a meeting. *See Opinions of the Public Access Counselor 99-FC-06; 06-FC-179; 07-FC-331; 09-FC-249; and 12-FC-297.* As such, it is my opinion that the Board did not violate the ODL by failing to post notice of the cancellation of the December 11, 2012 executive session on its website.

A governing body of a public agency is not required to use an agenda, but if it chooses to utilize one, the agency must post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. *See* I.C. § 5-14-1.5-4(a). If a public agency utilizes an agenda, the ODL does not prohibit it from changing or adding to the agenda during the meeting. *See Opinion of the Public Access Counselor 04-FC-166; 09-FC-40; and 12-FC-43.* The ODL provides no guidelines for the content or structure of a meeting agenda, and this office has indicated that an agenda can take essentially any form. *See Opinions of the Public Access Counselor 04-FC-02 and 08-FC-17.* However, a rule, regulation, ordinance, or other final action adopted by reference to the agenda number or item alone is void. *See* I.C. § 5-14-1.5-4(a). Mr. Kaminski provided in response to your inquiry that the Board abided by its own by-laws in amending the agenda for the December 11, 2012 meeting. As such, it is my opinion that the Board did not violate the ODL by discussing and taking final action on Ms. Kaiser's status in light of the issue not being listed on the agenda that was posted for the December 11, 2012 public meeting.

Please let me know if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read 'Joe Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: William S. Kaminski